

1 weren't you?

2 A Yes.

3 Q Could you turn to page 80 of that
4 deposition which I have tabbed for everyone in a
5 courtesy copy so that we can --

6 CHIEF JUDGE SIPPEL: Do I have a copy?

7 MR. CAMPBELL: I blame Mr. Estes for that,
8 Your Honor.

9 MR. ESTES: I accept all responsibility.

10 CHIEF JUDGE SIPPEL: No firing squad then.
11 It's Monday morning. Okay. This is 89 for
12 identification. You've identified it for the record.

13 (Whereupon, the above-referred
14 to document was marked as Gulf
15 Power Exhibit No. 89 for
16 identification.)

17 CHIEF JUDGE SIPPEL: Go ahead, Mr.
18 Campbell.

19 BY MR. CAMPBELL:

20 Q I direct your attention, Mr. Harrelson, to
21 line 22. Question: "So let me go back to the
22 question again. You're a long time power company

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1 employee in a collection of operation positions.
2 Doesn't the power company as a public utility have a
3 responsibility to its customers and the public to try
4 to ensure safety of its plants including attachments
5 by other parties?" Could you please read your answer,
6 sir?

7 A What page are you on?

8 Q Page 80 at the bottom. The one that has
9 the little sticky tab on it.

10 CHIEF JUDGE SIPPEL: Take your time and
11 read the question and the answer.

12 MR. CAMPBELL: Your Honor, may I approach?
13 I can help direct the witness.

14 CHIEF JUDGE SIPPEL: You may.

15 THE WITNESS: Line 4 down here.

16 MR. CAMPBELL: Right here, Mr. Harrelson.
17 Line 22 starting here. It's page 80 at the bottom.

18 THE WITNESS: Where I just --

19 MR. CAMPBELL: Yes, the way the transcript
20 is done it's a little odd, but right here, line 22.
21 That's the question I just read. Correct?

22 THE WITNESS: Line 4, the answer is "I can

1 tell you what the contract says."

2 BY MR. CAMPBELL:

3 Q The next question says "I'm just asking
4 you as an expert witness." What answer did you give?

5 A "I rely on what the contract says. The
6 contract says no."

7 Q Keep reading please.

8 A "May I add. The contract says the power
9 company has the right to do inspections periodically
10 as they see fit, but in no way does that give -
11 relieve the responsibility of the one attached to
12 fully comply and there is no responsibility assumed by
13 the one who has -- that's been an issue in some of
14 these trials like BellSouth and TCI."

15 "Did BellSouth have ..." That's the
16 question I guess.

17 Q I think you're still providing your
18 answer.

19 A "Did BellSouth have a responsibility to
20 make sure TCI was complying with the Code? I'm not
21 sure what the legal answer to that is, but I know that
22 that contract says and I know what this one says. It

1 says the same thing. It also requires indemnification
2 on the part of the attacher to the owner of the pole."

3 Q The answers you provided there are as true
4 today as they were when you gave them under oath in
5 that deposition, aren't they?

6 A That's true. There is a question and
7 answer that precedes that that I think is relevant to
8 the context.

9 Q Feel free to read it, Mr. Harrelson.

10 A The question begins on page 79. It says,
11 "Would you agree that the power company has some
12 obligations to its customers and the public at large
13 to have a system in place that will to a practical
14 extent assure safety to attachments?" My answer to
15 that question was "My opinion is every company, every
16 corporation, that's subject to the rules of the
17 National Electric Safety Code has a responsibility to
18 comply with the National Electric Safety Code and any
19 other state authority that has jurisdiction over them.
20 One company to police the other company is sort of
21 stretching it in my opinion."

22 Q And that's your opinion as you sit here

1 today as well, isn't it?

2 A To police, yes, but to be aware of what's
3 going on on their own poles, no.

4 Q The contracts that you were talking about
5 in the Comcast case and in the Clay case, they are
6 similar in that regard to the contracts that are at
7 issue in this proceeding. Correct?

8 A I don't recall how similar they are but
9 with respect to -- I frequently see in joint use
10 contracts reference to a right by the power company to
11 do inspections and so I can't recall that they're in
12 the Cox contract for instance in Florida. I don't
13 recall what those clauses were in that contract.

14 Q Well, you know they're joint use
15 agreements that Gulf Power has with the Complainants
16 in this case or have had in the past at least.
17 Correct?

18 A Yes.

19 Q Did you review those agreements before
20 opining as you did on pages 44 and 45 with your
21 prefiled written direct testimony?

22 A I did.

1 Q You also relied in your testimony on this
2 book, *Recommended Practices for Co-Axial Cable*
3 *Construction and Testing*. Correct?

4 A I found one illustration in there that I
5 thought was interesting and I referenced the book.

6 Q Did you have that illustration in your
7 office or this book in your office?

8 A I did at the time this case began. Yes.

9 MR. CAMPBELL: Your Honor, may I approach?

10 CHIEF JUDGE SIPPEL: You may.

11 MR. CAMPBELL: I am just going to avoid
12 passing out a bunch of additional paper.

13 BY MR. CAMPBELL:

14 Q Am I correct at Section 1.8 of this book,
15 Mr. Harrelson, that it says that the cable companies
16 should observe occupational safety and health
17 administration rules and national code rules and
18 National Electrical Safety Code rules?

19 A Yes.

20 Q You consider that a responsibility of the
21 cable operators. Correct?

22 A Yes.

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1 Q Thank you sir.

2 CHAIRMAN WALLIS: What's the edition of
3 that book? It's identified in the record.

4 MR. CAMPBELL: It's the second edition and
5 I don't have an exhibit list in front of me, but it's
6 a Complainant's exhibit.

7 CHIEF JUDGE SIPPEL: It is a Complainant's
8 exhibit.

9 MR. CAMPBELL: Yes.

10 MR. COOK: I believe it's No. 10.

11 CHIEF JUDGE SIPPEL: And did we have a
12 page number?

13 MR. CAMPBELL: Yes, we have a section 1.8
14 which is just in the foreword of the book? It doesn't
15 have a separate page number.

16 THE WITNESS: That's correct.

17 MR. SEIVER: Do you mean in the Project
18 Management? Is that it?

19 MR. CAMPBELL: I see. I'm sorry. It is
20 under Project Management. Section 1.8.

21 MR. SEIVER: I was on something that say
22 1.8 in the upper right-hand corner but that's not it.

1 That's where it's in bold, Your Honor.

2 CHIEF JUDGE SIPPEL: I have it. Thank
3 you. It's Complainant's Exhibit 10.

4 MR. CAMPBELL: Yes sir.

5 BY MR. CAMPBELL:

6 Q Am I accurate, Mr. Harrelson, that prior
7 to rendering your opinions in this case that you did
8 no research regarding Gulf Power's past practices with
9 regard to ensuring code violations are fixed once
10 they're brought to the attention of the utility?

11 A That's correct.

12 Q Mr. Harrelson, could you get a copy of
13 Gulf Power Exhibit 6 or excuse me, Complainant's
14 Exhibit 6 in front of you please? That's your
15 analysis of the Gulf Power Company identified poles.
16 Am I correct, sir, that in Gulf Power or Complainant's
17 Exhibit 6 when you were looking at Gulf Power's poles
18 generally on each pole you have a conclusion for the
19 court concerning whether rearrangement would be
20 required in order to accommodate additional attachment
21 or whether a change-out is required to accommodate an
22 additional attachment?

1 A Generally, that's correct.

2 Q Okay. There were few poles, however, sir,
3 I could really derive your conclusion with any degree
4 of specificity and I want to walk through those and
5 see if we can do that today. Okay?

6 A All right.

7 Q Could you turn to page 12 of Complainant's
8 Exhibit 6.

9 A I'm there.

10 Q Take a moment and look at your analysis
11 that you set forth there on page six if you would
12 because I'm going to ask you a question about it, Mr.
13 Harrelson.

14 A All right.

15 Q Now the picture that's on the screen is a
16 picture of the pole that you're discussing.

17 MR. SEIVER: Your Honor, I don't want to
18 interrupt Mr. Campbell, but that's our exhibit book.
19 Can I borrow this back? Thank you.

20 CHIEF JUDGE SIPPEL: Does the witness have
21 everything he needs to answer the question in front of
22 him? That's all I want to know.

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1 THE WITNESS: I have.

2 CHIEF JUDGE SIPPEL: Okay.

3 MR. CAMPBELL: Can we go off the record,
4 Your Honor?

5 CHIEF JUDGE SIPPEL: Yes. Go off the
6 record surely.

7 (Whereupon, the foregoing matter went off
8 the record at 9:34 a.m. and went back on the record at
9 9:35 a.m.)

10 CHIEF JUDGE SIPPEL: On the record.

11 BY MR. CAMPBELL:

12 Q Mr. Harrelson, can you tell me with any
13 degree of certainty whether this pole would require
14 rearrangement in order to accommodate an additional
15 attachment or rather would it require a change-out to
16 a taller pole?

17 A As I stated, this particular pole and it's
18 shown more clearly on pages 16 and 17 of my written
19 testimony, the pole has actually been broken probably
20 by a vehicle turning that street corner. So the pole
21 itself is broken and not strong enough to support the
22 attachments that are on it. So the first step of

1 rearranging or replacing whichever a competent
2 engineer deems is appropriate would be to replace this
3 broken pole in my opinion, in my experience.

4 Q If there -- Go ahead.

5 A So given that the pole itself has to be
6 replaced if and I looked at the measurements and it's
7 listed as a 45 foot pole. Osmose did not measure the
8 tops of the poles. They measured the heights of the
9 neutral, not the top of the pole. So looking at the
10 measurements, and I did not measure the top of the
11 pole either, but it looks like to me that this very
12 likely is a 40 foot pole rather than a 45. So there
13 are some engineering details that are not known to me.
14 I do know and I did notice that the secondary wires of
15 the power company which are copper wires and have been
16 there for a long number of years, they are sagging
17 much closer to the cable than the Code would permit.
18 That was one of the things Osmose identified. So that
19 has to be corrected in addition to changing the pole
20 to a different piece of wood.

21 So the pole has to be changed for strength
22 reasons. A competent engineer in my opinion would

1 design the replacement pole to either be a 40 or a 45
2 whichever is appropriate and he would also determine
3 if that one in place is a 40 or a 45 which I say is in
4 question to me because of the height of the attachment
5 of the neutral and beyond there, the new pole which
6 has to go in could easily be configured to accommodate
7 more attachments because basically there are two
8 attachments on there other than drops which are
9 somewhat out of place.

10 Q If Gulf Power were to replace this pole
11 with a different stick of wood that is of the same
12 size and class, could that pole accommodate another
13 attachment without having to go up and become
14 incrementally larger?

15 A They could and there's another condition
16 on this pole that's very common. That is what they
17 call an old spec pole, an old specification. It has
18 the neutral and the secondaries much higher on the
19 pole than the current standard. Therefore, I'm sure
20 that Gulf construction crews and the Gulf engineer
21 would place their wires in a different place on the
22 new pole from where they are on the existing pole.

1 Q So with respect to this pole, we just
2 can't determine as we sit here today whether
3 rearrangement would be required after you put the new
4 stick of wood in or whether you would have to have a
5 pole that is incrementally taller than the one that's
6 pictured in this photograph. Is that accurate?

7 A We certainly can't tell what an engineer
8 other than myself would do. I can tell you what I
9 would do, but I'm not certainly going to be the one to
10 do it. It will be a Gulf engineer that corrects this
11 problem.

12 Q Could you turn to page 46 in Complainant's
13 Exhibit 6 and here you're talking about the 14th pole
14 that was identified by Gulf Power Company. Correct?

15 A Yes.

16 Q The last sentence on page 46 says "It
17 appears that it can be rearranged for another
18 attachment and it could be changed to a taller pole if
19 necessary." Do you know if a taller pole is necessary
20 with any degree of certainty?

21 A Again, I would certainly clear up the
22 problem with the street light and the leads connecting

1 to the street light and I have it in my written
2 testimony as well that some of these street light
3 connections actually violate the Code and violate the
4 Gulf Standards because of the way that they are either
5 grounded or they are not grounded and by clearing up
6 the problem with the street light that it could
7 accommodate another attachment. But I'm not sure I
8 have all the measurements that I would need personally
9 to sign off on that one. But by working on the street
10 light, there could be space made above the existing
11 attachment for another attachment.

12 Q And that's what I'm getting at. It's that
13 "could." You just don't know that with any degree of
14 certainty as you sit here today. Correct?

15 A Not that I would be satisfied as an
16 engineer to sign off on. No.

17 Q Could you turn to page 122 of
18 Complainant's Exhibit 6 please, Mr. Harrelson? Am I
19 accurate that with respect to this pole that you
20 concluded a pole change-out may be necessary to
21 accommodate another attacher? Do you think that
22 that's likely in this scenario and the picture is on

1 the screen if you need to refer to the picture, Mr.
2 Harrelson.

3 A Yes, and my photograph shows some other
4 aspects of this pole. That one, there is a flood
5 light on the pole but it's completely hidden by the
6 transformer. So some of my other photographs show the
7 things that I'm discussing in the text that are not
8 visible on that particular photograph. So this pole
9 has associated with it problems on the adjacent poles
10 as well as this pole and it crosses a street in the
11 span. So I believe that pole probably -- And again,
12 it depends on the engineer and the extent to which the
13 engineer would agree to rearrange the power
14 facilities. But probably Gulf would conclude and I
15 think reasonably that that needs to be a taller pole.

16 Q Could you now turn to Complainant's
17 Exhibit 7 please, Mr. Harrelson?

18 CHIEF JUDGE SIPPEL: Before you do that,
19 what page on Exhibit 6 does that photograph appear?

20 MR. CAMPBELL: The page 123, Your Honor.

21 THE WITNESS: One hundred twenty-three is
22 the Osmose photo and the following pages are

1 additional photos that I took.

2 CHIEF JUDGE SIPPEL: Thank you.

3 MR. SEIVER: Could you just help me out
4 since this one isn't numbered? Oh, I'm sorry. It's
5 pole no. 32.

6 MR. CAMPBELL: Correct.

7 MR. SEIVER: Sorry. Thank you.

8 MR. CAMPBELL: If we have done nothing
9 else in this proceeding, we have identified poles by
10 several different monikers.

11 BY MR. CAMPBELL:

12 Q Are you at Exhibit 7, Mr. Harrelson?

13 A Not yet.

14 CHIEF JUDGE SIPPEL: What page are you at?

15 THE WITNESS: Exhibit 7, he's directing me
16 to.

17 BY MR. CAMPBELL:

18 Q Could you turn to page 63 of Exhibit 7,
19 Mr. Harrelson?

20 MR. SEIVER: Mr. Campbell, could you help
21 me out and tell me which pole?

22 MR. CAMPBELL: No. 17. Pole 17. And on

1 the screen, I have the photograph that appears on page
2 64, the following page. Let's look at page 63 first,
3 Mr. Harrelson.

4 CHIEF JUDGE SIPPEL: Page 63 is the typed
5 commentary. Is that correct?

6 MR. CAMPBELL: Correct.

7 BY MR. CAMPBELL:

8 Q Am I accurate that you did not attempt to
9 inspect this particular pole?

10 A That's correct.

11 Q But looking at the photograph, you see no
12 reason why make-ready to include a possible pole
13 change-out could not accommodate more attachments.
14 Correct?

15 A That's correct.

16 Q Do you know whether it's more likely or
17 not that a pole change-out would be required?

18 A I don't know.

19 Q Could you turn to page 129 of
20 Complainant's Exhibit 7 and that is with respect to
21 Pole No. 34, Mr. Seiver. Are you there, Mr.
22 Harrelson?

1 A Yes.

2 Q And the picture that appears on the screen
3 is page no. 130 of Complainant's Exhibit 7. On page
4 129, you state "This pole is not full because it can
5 be rearranged or changed to a taller pole if necessary
6 to correct the multiple violations and make space for
7 another attachment." Can you conclude whether it will
8 need to be rearranged or whether it will need to be
9 changed to a taller pole?

10 A Yes. I think it's very likely that Gulf
11 would want now to change that to a taller pole after
12 the added facilities for that new --

13 Q Mr. Harrelson, could you turn to --

14 A And in addition, I also would like to add
15 that a third cable attacher attached to that one
16 between the date that this photograph is taken and
17 then the next photo which I took. So there is really
18 three cables attached there now rather than two and so
19 there's been attachments added to that particular pole
20 over time by the power company and by the cable
21 operators and I think probably almost certain now that
22 it would have to be a taller pole.

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1 Q So as we sit here today, it's your
2 testimony that this pole is even more congested than
3 it once was.

4 A Yes. It has an additional Southern Light
5 attachment on there.

6 Q Could you turn to page 150 of
7 Complainant's Exhibit 7? This is with regard to pole
8 no. 39.

9 A I'm there.

10 Q The picture that's on the screen is the
11 photograph that is on page 151. Looking at page 150
12 for a moment, second to the last line, you conclude
13 "This pole is not full. It can be rearranged or
14 changed out." My question to you, Mr. Harrelson, is
15 which one.

16 A As an engineer, this pole could be
17 rearranged but by looking at the adjacent pole and
18 Gulf's practice in this particular pole line, I feel
19 like they would go with a taller pole and a different
20 configuration just by looking at the newer poles.
21 This pole appears to have been at one time a
22 transmission circuit up top and a distribution circuit

1 underneath and it's now utilized as two distribution
2 circuits and there is a long distance between the
3 bottom circuit and the arm which has the switches and
4 then there's a long distance down to the transformers.
5 That could be moved up, but I don't believe they would
6 choose that option. This pole is rather old and now
7 has an additional cable which is the Southern Light
8 cable attached to it with all those pre-existing
9 violations.

10 Q So it's even more congested as you sit
11 here today is your testimony.

12 A Yes. I'm not certain if that photograph
13 -- I believe perhaps that photograph did have the
14 Southern Light strand on it, but now the Southern
15 Light strand has the fiber optic cable latched to the
16 strand wire and it has changed the configuration as
17 well. They put a little stand-off bracket on, a
18 stand-off, on there to get their facilities out of the
19 way from the electric just a little.

20 Q Could you turn to page 158 of
21 Complainant's Exhibit 7?

22 CHIEF JUDGE SIPPEL: What page was that?

1 MR. CAMPBELL: One hundred and fifty-eight
2 and this is with respect to pole no. 41, Mr. Seiver.

3 MR. SEIVER: Thank you.

4 MR. CAMPBELL: And the photograph that
5 appears on the screen is page 159 of that same
6 exhibit.

7 CHIEF JUDGE SIPPEL: That's Complainant's
8 Exhibit 7. Right?

9 MR. CAMPBELL: Yes sir.

10 CHIEF JUDGE SIPPEL: Thank you.

11 BY MR. CAMPBELL:

12 Q I direct your attention to the third line
13 from the bottom. "This pole is not full because it
14 can be rearranged or replaced if necessary to provide
15 space for correcting violations and a new attachment."
16 Do you know which one is more likely than the other,
17 rearrangement or change-out, Mr. Harrelson?

18 A I don't know and the reason I don't know
19 is because different engineers choose different
20 solutions to rearranging versus pole change-outs. I
21 could with enough information tell you that it's
22 possible to rearrange facilities. For instance, you

1 can extend that U-shaped riser guard up to at least
2 ten inches above the bottom of those transformers and
3 that is frequently chosen as an option. It's not
4 necessarily an option that Gulf would agree with, but
5 it is used frequently. So as a representative of the
6 cable company in this case, I can't tell you what the
7 power company would agree to.

8 Q Could you turn to page 164 of the
9 Complainant's Exhibit 7 please?

10 A One hundred sixty-four?

11 Q Yes sir and this is with regard to, did we
12 just do that one, pole 43. The photograph I have on
13 the screen again is the next page in that same
14 exhibit. I direct your attention to the third line
15 from the bottom. You conclude "This pole is not full.
16 It can be replaced if necessary to correct violations
17 and make a space available for a new attachment."
18 Will it be necessary to replace this pole with a
19 taller pole, Mr. Harrelson?

20 A I don't know and again, it would be Gulf's
21 ultimate decision I believe as to what's acceptable to
22 them even on their new configuration because it is

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1 almost routine for a new pole to have a new
2 configuration not exactly like what's on the older
3 existing pole.

4 Q Would you agree, Mr. Harrelson, that a
5 very high percentage of the poles that you opine on
6 would require some form of make-ready in order to
7 accommodate an additional attachment?

8 A I would of these examples that have been
9 chosen. Yes.

10 Q And you understand that Gulf Power's
11 definition of crowding is that if a pole requires
12 make-ready in order to accommodate an additional
13 attachment it is at full capacity or crowded.
14 Correct?

15 A I do. I understand that that's their
16 position and I'd like to explain if I may, I don't
17 know if I may, why my position is so much different
18 from that.

19 Q I think you'll be given an opportunity to
20 do that when your lawyer stands up and redirects you,
21 Mr. Harrelson, but for now, if you could stick with
22 me, I would appreciate it. Would you agree then, Mr.

1 Harrelson, that if the Court were to accept Gulf
2 Power's definition of crowding or full capacity that
3 a very high percentage of the poles you have opined
4 upon would fit that definition?

5 MR. SEIVER: Objection to the form of the
6 question, Your Honor. Calls for an opinion as to the
7 status of the poles.

8 MR. CAMPBELL: That's what I'm supposed to
9 do on cross examination.

10 CHIEF JUDGE SIPPEL: Well, the witness, do
11 you understand the question?

12 THE WITNESS: Yes sir.

13 CHIEF JUDGE SIPPEL: Can you answer it?

14 THE WITNESS: Yes sir.

15 CHIEF JUDGE SIPPEL: I'm going to overrule
16 the objection.

17 THE WITNESS: Yes.

18 BY MR. CAMPBELL:

19 Q Mr. Harrelson, what's the difference
20 between congestion and crowding?

21 A I don't know the definition of the term
22 "crowded" in any legal context and as far as engineers

1 trying to communicate, that's one of the main pre
2 conditions of communicating is to define terms used.
3 So in this proceeding, I don't know that either term
4 has been defined. So I can't tell you what the
5 difference is if any.

6 CHIEF JUDGE SIPPEL: So that distinction
7 you were asking is between crowded and congested.

8 MR. CAMPBELL: Yes sir. That was a new
9 one on us and I asked him a question about poles being
10 more congested because of the presence of --

11 CHIEF JUDGE SIPPEL: Right. I just wanted
12 to be sure.

13 MR. CAMPBELL: So I just wanted to clarify
14 that.

15 CHIEF JUDGE SIPPEL: All right. I just
16 wanted to be sure I heard it right.

17 BY MR. CAMPBELL:

18 Q Now, Mr. Harrelson, you've done pole line
19 inspections before in your career. Correct?

20 A That's correct.

21 Q Am I accurate, sir, that when you go out
22 there you find various Code violations and